

VZCZCXRO8268
PP RUEHDBU
DE RUEHKV #0922/01 1071552
ZNY CCCCC ZZH
P 171552Z APR 07
FM AMEMBASSY KYIV
TO RUEHC/SECSTATE WASHDC PRIORITY 2022
INFO RUEHZG/NATO EU COLLECTIVE
RUCNCIS/CIS COLLECTIVE
RUEHLMC/MILLENNIUM CHALLENGE CORP WASHDC

C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000922

SIPDIS

SIPDIS

E.O. 12958: DECL: 04/17/2017
TAGS: [PGOV](#) [PREL](#) [PHUM](#) [UP](#)
SUBJECT: UKRAINE: CONSTITUTIONAL COURT BEGINS HEARINGS ON
PRESIDENTIAL DECREE

REF: A. KYIV 906
[1](#)B. KYIV 871

KYIV 00000922 001.2 OF 002

Classified By: DCM Sheila Gwaltney for reasons 1.4(a,b,d).

[1](#)1. (SBU) Summary. The Constitutional Court began full court hearings on April 17 into the constitutionality of Yushchenko's April 2 decree dismissing the Rada and calling new elections, while accusations of bribery, threats, and political pressure swirled around the proceedings. Despite earlier warnings by some judges that they might boycott proceedings due to concerns about political pressure placed on the court, all 18 judges attended the opening hearing, in which they decided a few procedural issues and formally designated most of the next two weeks for further hearings. On the eve of the hearing April 16, Acting Head of the Security Service (SBU) Nalyvaychenko, considered loyal to President Yushchenko, held a press conference to state that the SBU had evidence of \$12 million worth of recent property transfers to a close relative of reporting judge Susanna Stanik and of tampering with the car of the close relative of one of the judges who had complained of threats. Yushchenko's Court representative Shapoval also alleged in his opening court comment that the judges had violated court procedure April 3 in assigning the case to Stanik. After a three day absence from the streets, coalition supporters returned, with an estimated 1,500 demonstrators surround the court building, occasionally disrupting traffic.

[1](#)2. (C) Comment: The SBU's claim of confirmation of rumored efforts to bribe and intimidate the court in the run-up to its most important case will likely further muddy the waters surrounding the Court. Political leaders are positioning themselves rhetorically: both President and Prime Minister in the past few days have said that they would accept the Court's ruling, although the PM told Russian ORT April 16 that he was confident the court would overturn the decree, and that such a ruling could possibly lead the Rada to impeach the President, among other outcomes. Opposition leaders Tymoshenko, Kyrylenko, and Lutsenko held a joint press conference late April 17 to say that concerns about the process meant that they could not accept a decision against Yushchenko's decree. Preliminary voting on the initial procedural issues indicates that the Court may truly be split 9-9, as opposition leader Tymoshenko predicted to Ambassador April 12 (ref A). If that split remains, renewed focus may again shift to negotiations between Yushchenko and Yanukovych, both of whom were traveling in western Europe meeting European leaders April 17, Yushchenko in Brussels and Yanukovych in Strasbourg. End summary and comment.

Court Starts Off on Contentious Foot

13. (SBU) Despite earlier threats of recusal by five judges due to alleged political pressure, all 18 judges attended the April 17 hearing of an appeal by 53 Regions MPs of Yushchenko's April 2 decree dismissing the Rada and calling for early elections. All interested parties were represented in the Court, including the official Presidential and Rada Court representatives, two MPs on behalf of the coalition, and three lawyers on behalf of the CabMin, led by Deputy Minister of the Cabinet of Ministers Lukash, Yanukovich's lawyer in the 2004 Supreme Court case on the presidential elections. Court Chairman Dombrovskiy warned that, because of the large number of claims and questions in front of it, the Court would not be able to rule quickly.

14. (SBU) Presidential representative Shapoval presented a letter from Yushchenko expressing concern over allegations of corruption on the part of Reporting Judge Stanik (details below), as well as possible violations in court procedure when the case was assigned by deputy Court Chair Pshenychniy, rather than Court Chair Dombrovskiy, on April 3 to Stanik to serve as reporting judge. (Note: The reporting judge is in charge of gathering all necessary information, calling the witnesses, and drafting the ruling. End Note)

15. (SBU) The Court's first decision was to schedule further plenary sessions on April 18-19 and April 23-26 by a vote of 11-6. As part of this resolution, Reporting Judge Stanik initially attempted to force a vote on draft rules of procedure for examining the case without distributing the text to the judges. After a number of judges protested, Court Chair Dombrovskiy ordered copies be made and distributed to the judges, who then criticized the content as not clearly laying out the order and procedures for proceeding with examination of the case, leading to testy exchanges with Stanik.

KYIV 00000922 002.2 OF 002

16. (SBU) Stanik then presented the essence of the case, and the Court ruled on three motions from the coalition MPs. The three motions, which touched on introducing additional documentation from the Rada and Presidential Secretariat, addressed a key underlying issue--whether the Rada is currently empowered to act. In the debate on whether to allow introduction of two Rada resolutions condemning the decree, several judges argued that the decree should be considered a normative act in force until the Court acted and that, therefore, the Rada could not provide documents adopted after the April 2 dissolution. In the end, the motion was rejected in a 9-9 vote, highlighting the current divide on the Court.

Accusations of Bribery, Threats, Procedural Violations

17. (SBU) Judge Stanik stands at the center of a controversy about alleged bribery and case assignments. Initial accusations that Stanik's family having received two multi-million dollar apartments in Kyiv came from OU MP Knyazevych. Acting SBU Chief Nalyvaychenko caused a bigger stir on the eve of the Court hearing April 16 by announcing at a press conference that the SBU had evidence that an elderly, unemployed close relative of Stanik, identified in the press as her mother, had received ownership of 12 million dollars worth of property in Kyiv, Lviv, and Yalta, including real estate and cars.

18. (SBU) The Prosecutor General's office claimed in reply April 17 that there was no basis for the accusation against Stanik. Speaker Moroz and Lukash condemned Nalyvaychenko's press conference as supposed proof that the Presidential Secretariat was pressuring judges. Yanukovich was quoted at

SIPDIS
a meeting at the Council of Europe in Strasbourg April 17

that the law-enforcement system in Ukraine was broken when the SBU and PGO openly dispute whether evidence existed. Stanik strongly denied the accusations in her opening comments, stating: "if Nalyvaychenko is so sure I received something, I will share it with him."

¶9. (C) A second debate arose April 17 over whether the decision to name Stanik as the reporting judge followed Court rules. Shapoval maintained that Deputy Court Chairman Pshenychniy acted improperly April 3 in assigning the case to Stanik, since Chair Dombrovskiy should have made the decision. Pshenychniy--who, along with Stanik, was put on the court by President Kuchma--claimed that he assigned the case along with two other documents on April 5 when Dombrovskiy was on Easter vacation. However, embassy staff have seen the internal court document bearing Pshenychniy's signature; it is dated April 3, when Dombrovskiy was in court. (Note: Embassy was shown the document in strict confidence, so no acknowledgment that the USG has seen this internal document should be made. End note.)

¶10. (SBU) Nalyvaychenko also stated at his April 16 press conference that the SBU, following up on the expressed concerns of the five judges who had complained of political pressure against them and the court, had turned up solid evidence that unnamed people in Lviv had tampered with the car of a close relative on one of the five judges; he judged the action to be related to the alleged threats against the judges, whose public appeal April 10 made clear they were sympathetic to Yushchenko's position (ref B).

If the Court Rules, Will it be Respected?

¶11. (SBU) Both Yushchenko and Yanukovych have said they will abide by the Court's decision. However, opposition leaders Tymoshenko, Lutsenko, and Kyrylenko held a joint press conference late April 17, citing the reports of bribery and threats, and announced they would not accept a CC ruling that overturned Yushchenko's decree. In an April 16 interview with Russian television channel ORT, Yanukovych said that if the Court agreed that Yushchenko's actions were unconstitutional, there would be negative implications for the President, including possibly impeachment. Since impeachment requires the eventual support of 338 MPs and there is a gap in implementing legislation, such comments are more likely designed to put pressure on Yushchenko to suspend or withdraw the decree or perhaps to be more flexible in negotiations with the PM.

¶12. (U) Visit Embassy Kyiv's classified website:
www.state.gov.gov/p/eur/kiev.
Taylor